IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 877 of 1991

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BAI KAPILA

Versus

STATE OF GUJARAT

Appearance:

MR NS DESAI for Petitioner

MR ST MEHTA APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/09/2000

ORAL JUDGEMENT

This revision application under Section 397 read with Section 401 CrPC is preferred by the accused nos. 1,3 and 4 in Sessions Case No. 25 of 1986. The accused no. 2 died pending appeal before the learned Additional Sessions Judge.

2. The accused no. 1 was the mother-in-law of one Ritaben. The accused no. 2 was the father-in-law of the said Ritaben. The accused no. 3, the husband and the accused no. 4 was the brother-in-law of the said Ritaben. The said Ritaben was married to the accused no. 3-Ileshkumar Manubhai Soni sometime in the year 1983, however, after her marriage, she was being harassed by all the accused persons for want of adequate dowry. On the date of the incident ie., on 23rd March, 1985, she was driven out of the house by the accused persons alongwith her infant daughter and she committed suicide by jumping before the Railway Engine alongwith her infant daughter. The said Ritaben died, however, infant survived but lost her limbs ie., her left leg and left hand were severed. All the four accused were tried for the offences punishable under Section 498 A and Section 306 IPC in Sessions Case No. 25 of 1986 by the learned Assistant Judge, Nadiad. By judgment and order dated 30th May, 1986, the learned Asstt. Sessions Judge convicted all the four accused persons under Section 498 A and 306 IPC. For offence punishable under Section 306 IPC, all the accused were sentenced to three years' r.i and a fine of Rs. 300/=; in default of payment of fine, further sentence of three months' r.i. was imposed. For offence under Section 498A IPC, all the accused were sentenced with r.i. for one year and a fine of Rs. 200/=; in default of payment of fine, further r.i. for one month was imposed. Feeling aggrieved, all the accused preferred Criminal Appeal No. 54 of 1986. The appeal was heard by the learned Addl. Sessions Judge, Nadiad. By judgment and order dated 26th June, 1991, the learned Addl. Sessions Judge acquitted the accused persons under Section 306 IPC and set-aside the sentence for the said offence. The conviction and sentence under Section 498A IPC was confirmed. Feeling aggrieved, the surviving accused nos. 1,3 and 4 have preferred the present revision.

Mr. Desai has submitted that the deceased Ritaben had died of an accidental death. She collided with an approaching railway engine, while crossing the railway track. She, therefore, cannot be said to have committed suicide nor can the accused persons be said to have committed any offence. In the alternative, he has submitted that the accused no. 1, the mother in law, has now reached the age of 80 years and she has been looking after the infant handicapped baby and she, therefore, should be released on probation of good conduct.

I am unable to agree with the contentions raised

by Mr. Desai. The fact that deceased Ritaben was being maltreated and was driven out of the house by the accused persons has been established through the evidence of the brother and the aunt of the deceased Ritaben, and the neighbour of the accused persons. The fact that the deceased Ritaben committed suicide has been established by the evidence of the Railway Engine Driver. He has in no uncertain terms deposed that the woman with a baby in the arms was waiting on the side of the railway track and when the railway engine approached, she ran and jumped in front of the railway engine. Both the courts below have held that the deceased Ritaben had committed suicide by throwing herself in front of the approaching railway engine. It is not possible to hold that deceased Ritaben had died of an accident, as contended by Mr. Desai. The proposition that the accused no. 1 should be released on probation of good conduct also does not appeal to me. Ordinarily, a female accused, if is convicted and sentenced with imprisonment for a limited term and that too of an advanced age, would be released on probation of good conduct. However, in the present case, such leniency cannot be granted. The offence proved is not one against an individual person but is one against the Society. If all the accused persons were to be released on probation merely on the ground that such accused person is a woman of an advanced age, Section 498-A IPC would become ineffective as against the mothers-in-law, who are found to be subjecting their daughters-in-law to cruelty. Even the accused no. 1, therefore, should not be released on probation of good conduct.

Revision application is dismissed. Rule is discharged. The accused may surrender before the trial Court within a period of three weeks from today.

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Prakash*